

Editor's note: Reconsideration denied by order dated Jan. 15, 1976; Appealed -- remanded Civ. No. 75-538 (D.N.M. April 23, 1976, decision set aside, referred to Hearings Division -- See William T. Alexander (On Remand), 28 IBLA 277 (Dec. 22, 1976); reaffirmed as modified -- See U.S. v. William T. Alexander, 41 IBLA 1 (May 21, 1979); Appealed -- aff'd, Civ.No. 79-603-B (D.N.M. July 7, 1980).

WILLIAM T. ALEXANDER

IBLA 74-277

Decided June 18, 1975

Appeal from a decision by the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer NM 20947.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geological Structure

It is the date of the ascertainment by the Geological Survey of the producing character of a structure underlying a tract of land and not the date of the pronouncement of said fact which is determinative of rights depending on whether or not the land is situated within a known geological structure (KGS). A noncompetitive oil and gas lease offer must be rejected if, at any time before a lease actually issues, the land described therein becomes within a KGS, even if the offer was filed, prior to the ascertainment of the KGS.

2. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Known Geological Structure -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease must be canceled where the land described therein is determined by the United States Geological Survey to be within a known geological structure of a producing oil or gas field as of the date of the signing of the lease on behalf of the United States by the authorized officer.

3. Oil and Gas Leases: Known Geological Structure

One who attacks a determination by the Geological Survey that lands are situated within the known geological structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

4. Oil and Gas Leases: Known Geological Structure

An addition may be made to an existing known geological structure on the basis of drill stem test information which gives rise to the reasonable inference that a producing reservoir extends under the land included in the addition. It is not necessary that the well from which the information is derived be completed to a producing status before such conclusion is reached where the test information discloses the presence of two reservoirs which are present and productive in the adjoining producing field.

APPEARANCES: George H. Hunker, Jr., Esq., Hunker, Fedric & Higginbotham, P.A., Roswell, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William T. Alexander has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated March 29, 1974, which rejected his noncompetitive oil and gas lease offer (NM 20947) because the land applied for is in a known geologic structure (KGS) and may only be leased by competitive bidding as provided under 43 CFR 3120.

An oil and gas lease offer (drawing entry card) for Parcel 52 (SE 1/4 SW 1/4 of sec. 33, T. 20 S., R. 27 E., N.M.P.M.), filed by appellant during the simultaneous filing period ending at 10 a.m., January 28, 1974, was drawn No. 1 at the public drawing held on February 6, 1974. Thereafter, a lease form was conditionally signed on behalf of the United States on March 12, 1974, by the Chief, Minerals Section, with the effective date of the lease designated April 1, 1974. The lease form bears the following inscription:

This lease is subject to the determination by the Geological Survey as to whether the lands herein described were on a known geologic structure of a producing oil or gas field as of the date of signing hereof by the authorized officer.

Subsequently, the Geological Survey advised BLM on March 26, 1974, that the land described in the lease offer was in an undefined addition to the Catclaw Draw Field undefined known geologic structure effective February 27, 1974. The BLM office took the action adverse to lessee, and this appeal ensued.

Appellant alleges error in two major regards: first, that the lease offer was accepted by the United States prior to an addition to the KGS, either because of prior approval of the communitization agreement involving the tract, or because the regulations allow the lease to be made effective the first day of the month in which it is signed; and second, that the KGS determination by Geological Survey was premature and made without sufficient legal basis.

Appellant's contentions cannot be accepted. Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1970), permits the leasing of lands within a known geological structure of a producing oil or gas field only after competitive bidding. Lands not within such a structure may be leased to the first qualified applicant, 30 U.S.C. § 226(c) (1970). The Secretary of the Interior has delegated the duty to determine the known geological structures of producing oil or gas fields to the United States Geological Survey (Survey). DM 220.4(g); 43 CFR 3100.7-1. A Departmental regulation defines a known geologic structure as "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." 43 CFR 3100.0-5.

[1] The date of the ascertainment by Survey of the fact of the producing character of a structure underlying a tract of land, and not the date of the pronouncement, is determinative of rights depending on the KGS status. 43 CFR 3100.7-3. If, at any time before a lease actually issues, land becomes within a KGS, a noncompetitive offer must be rejected, even if it was filed prior to the ascertainment of the KGS. 43 CFR 3110.1-8; T. D. Skelton, 9 IBLA 322, 325 (1973); James W. McDade, 3 IBLA 226 (1971), aff'd, McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, per curiam, D.C. Cir., No. 73-1520 (March 12, 1974); Solicitor's Opinion, 74 I.D. 285 (1967).

The fact, which appellant contends, that the lands within his offer were included in a communitization agreement prior to March 12, 1974, does not mean that his offer was accepted and a lease actually or constructively issued prior to that time. In view of the circumstances involved here we must reject additional contentions that a lease should be issued with the effective date on or prior to March 1, 1974. For the purpose of this appeal we shall assume arguendo that the execution of the lease form on March 12, 1974, constituted issuance of a lease. Therefore, March 12, 1974, may be deemed the controlling date for determining whether the land was then within a KGS. 1/

Whether there was an offer or a lease in effect on March 12, 1974, the end result must be the same. If a lease, it must be canceled; if an offer, it must be rejected. Prior to execution of the lease by the appropriate Departmental official no rights are vested in the offeror and if it is determined that the lands were within a KGS prior to that time a noncompetitive lease offer must be rejected even if it had been conditionally approved prior to the inclusion of the land within the structure. Geral Beveridge, 14 IBLA 351, 81 I.D. 80 (1974).

[2] Since this Department has no authority to lease lands within a KGS except by competitive bidding, it follows also that if a lease is executed and issued after the land is within the KGS, but before the actual pronouncement of the fact by Survey, the lease is a nullity and must be canceled. Skelly Oil Company, 16 IBLA 264 (1974); Robert B. Ferguson, 9 IBLA 275 (1973). Therefore, if the land was within a KGS prior to March 12, 1974, the lease, if a lease is deemed to have been issued, must be canceled or, in any event, the offer must be rejected.

We turn now to appellant's contentions regarding the legal sufficiency of the basis for Survey's determination that the lands involved here were embraced within a KGS on February 27, 1974. Appellant has submitted reports from engineers and information to

1/ Regulation 43 CFR 3110.1-2 provides that all noncompetitive oil and gas leases:

"* * * will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed."

We need not decide whether the signing of the lease form in this case actually constituted issuance of a lease where it was conditioned upon Survey's determination of the KGS status or if the April 1, 1974, "effective" date should govern instead of the date of execution.

support his contentions. He contends, inter alia, that the Penroc well upon which Survey relies as the basis for extending the KGS to an area including appellant's lease offer did not provide adequate information for the KGS determination. He points to the fact that there are two formations within the Catclaw Draw KGS, the Permian Wolfcamp and the Pennsylvanian Morrow formation, and contends that neither of them could be deemed to extend into the area of his lease offer until after March 12, 1974. Copies of appellant's briefs and information were furnished to Survey. The gist of Survey's position with regard to appellant's contentions are set forth in a memorandum dated August 23, 1974, from the Area Geologist, Southern Rocky Mountain Area, as follows:

* * * The Conservation Division's District Engineer at Artesia was contacted to determine the status of this well [the Penroc Oil Company #1 Allied in NW 1/4 NE 1/4 sec. 27, T. 20 S., R. 27 E., N.M.P.M.] and he reported orally on March 25, 1974, that drill stem tests were run on February 27, 1974, in the Permian Wolfcamp formation and, March 8, 1974, in the Pennsylvanian Morrow formation. Drill stem test results - Wolfcamp maximum flow 6,086 MCF gas per day, Morrow maximum flow rate 700 MCF gas per day.

These tests show that Wolfcamp and Morrow reservoirs are present to the north in section 27, and because of these data in conjunction with data from Ralph Lowe well #1 SE 1/4 SW 1/4 sec. 34, T. 20 S., R. 27 E., David Fasken well #1 lot 11, sec. 3, T. 21 S., R. 26 E., and David Fasken well #2 lot 13, sec. 2, T. 21 S., R. 26 E., an undefined addition to the undefined KGS for the producing Catclaw Draw field was made. February 27, 1974, the date of the first drill stem test indicating the presence of a producing reservoir was used as the effective date of this action.

* * * * *

The results of the drill stem tests run in the Penroc Oil Co. well #1 Allied NW 1/4 NE 1/4 sec. 27, T. 20 S., R. 27 E. show both Wolfcamp and Morrow reservoirs are present. Both of these reservoirs are present to the south inside the existing known geologic structure, therefore by geologic inference, an addition to the KGS was made. The Penroc Oil Co. well #1 Allied was subsequently completed May 15, 1974, as a dual producer from both the Wolfcamp and Morrow reservoirs.

I want to emphasize, the Catclaw Draw field is a producing gas field, and the drill stem test data from the Penroc Oil Co. well #1 Allied is sufficient to show two reservoirs are present, which are also present in the Catclaw Draw field. This action was an addition to an existing KGS, and not the establishment of a new and separate KGS which would require the actual completion of an oil or gas well.

[3] A person appealing from a determination by the Survey that land is within a KGS has the burden of making a clear and definite showing that the determination was incorrect. The determination will not be disturbed where such a showing has not been made. T. D. Skelton, *supra* at 325; McClure Oil Company, 4 IBLA 255, 260 (1972); Duncan Miller, A-30300 (May 13, 1965). Appellant's burden has not been satisfied because the information he has submitted does not clearly and definitely show error in Survey's determination.

[4] The major thrust of appellant's contention that the KGS determination was improper is his assertion that a drill stem test is not a sufficient basis for a finding that an area is within a KGS since a completed producing well is required to show that an area is a producing oil or gas field. The first part of this assertion is not correct. There need only be production somewhere within the structure. The determination that land is within a KGS does not guarantee that the entire area is productive; it only shows that on the basis of geological evidence the Department has determined there is a structure in which oil or gas is trapped and there is production from a well on that structure. An addition may be made to an existing KGS on the basis of information which shows that the producing reservoir extends under the lands included in the addition. Information from a drill stem test may provide a sufficient basis for extending the KGS. It is not necessary that there be a completed producing well before making that determination. Sheridan L. McGarry, A-29518 (July 29, 1963); See Robert D. Snyder, 13 IBLA 327, 330 (1973); John P. Dever, 67 I.D. 367, 375 (1960). The determination made by Survey was an addition to the existing KGS expanding the Catclaw Draw field. The drill stem tests from the Penroc well support the inference that two of the reservoirs which are productive in the Catclaw Field also extend under the land embraced in the appellant's lease offer.

We find that the information of record adequately demonstrates that the land within appellant's offer was within a KGS prior to

March 12, 1974. It is unnecessary to discuss whether reliance on the information ascertained as of February 27, 1974, was sufficient alone to support the determination, or additional information concerning the Morrow formation ascertained March 8, 1974, was necessary. The requisite information was known prior to March 12, 1974, so that the lease purportedly issued that day must be canceled, and its antecedent offer rejected.

Appellant has requested an opportunity to make an oral presentation to this Board. We do not believe any useful purpose would be served in this case by such a presentation. Accordingly, the request is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to rejection of the offer, and the purported lease NM 20947 is canceled.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

